

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

00727 U.S. PTO
10/692545
102403

In re application of:

Gary K. Michelson

Serial No: (Cont. of 09/626,636)

Filed: October 24, 2003

For: DISTRACTOR FOR USE IN SPINAL
SURGERY

Prior Application Information:

Group Art Unit: 3731

Examiner: U. Ho

MS PATENT APPLICATION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

CONTINUING APPLICATION TRANSMITTAL

Transmitted herewith for filing is a ☒ Continuation ☐ Divisional ☐ Continuation-In-Part application under 37 C.F.R. § 1.53(b) of prior patent application No. 09/626,636, filed July 27, 2000.

- ☐ Applicant claims small entity status under 37 C.F.R. §§ 1.9 and 1.27.
- ☒ 51 total application pages including specification, claims (31 total and 2 independent), and abstract are enclosed.
- ☐ A newly executed Declaration and Power of Attorney ☐ is enclosed ☐ will follow.
- ☒ A copy of the Declaration and Power of Attorney from the prior application is enclosed.
The entire disclosure of the prior application, from which an oath or declaration is supplied, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.
- ☒ 24 sheets of formal drawings (A4 paper; Figs. 1-18) are enclosed.
- ☒ The prior application is assigned of record to: Karlin Technology, Inc. on June 10, 1993 at Reel 6600, Frame 322.
- ☒ The power of attorney in the prior application is to at least one of the following: MARTIN & FERRARO, LLP; Thomas H. Martin, Reg. No. 34,383; Amedeo F. Ferraro, Reg. No. 37,129; and Todd M. Martin, Reg. No. 42,844.
 - ☐ The power appears in the original Declaration of the prior application.
 - ☒ Since the power does not appear in the original Declaration, a copy of the Revocation of Original Power of Attorney and Grant of New Power of Attorney in the prior application is enclosed.
- ☐ A certified copy of ____ Patent Application No. ____ filed ____ from which priority is claimed under 35 U.S.C. § 119 is enclosed.
- ☒ Information Disclosure Statement (IDS) and Form PTO-1449 are enclosed.
- ☒ Request for Interference Under 37 C.F.R. § 1.604 is enclosed.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Gary K. Michelson)
Serial No.: (Cont. of 09/626,636)) (Group Art Unit: 3731)
Filed: October 24, 2003) (Examiner: U. Ho)
For: DISTRACTOR FOR USE IN)
SPINAL SURGERY)

MS PATENT APPLICATION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

CERTIFICATE OF MAILING VIA U.S. EXPRESS MAIL

Express Mail Mailing Label No. ET692326299US

Date of Deposit: October 24, 2003

I hereby certify that:

1. Continuing Application Transmittal Form (in duplicate; \$968.00 filing fee charged to Deposit Account No. 50-1068)
2. 51 total application pages including specification, claims (31 total and 2 independent), and abstract
3. Copy of Declaration and Power of Attorney from prior application
4. 24 sheets of formal drawings (A4 paper; Figs. 1-18)
5. Copy of Revocation of Original Power of Attorney and Grant of New Power of Attorney from prior application
6. Information Disclosure Statement Under 37 C.F.R. § 1.97(b) with Form PTO-1449
7. Self-addressed return postcard receipt
8. Request for Interference Under 37 C.F.R. § 1.604

are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service with sufficient postage under 37 C.F.R. § 1.10 on the date indicated above and are addressed to:

MS PATENT APPLICATION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Date: October 24, 2003


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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Gary K. Michelson, M.D.)	
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Serial No.: (Con. of 09/626,636))	Group Art Unit: (3731)
)	
Filed: October 24, 2003)	Examiner: (U. Ho)
)	
For: DISTRACTOR FOR USE IN)	
SPINAL SURGERY)	

Mail Stop PATENT APPLICATION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REQUEST FOR INTERFERENCE UNDER 37 C.F.R. § 1.604

Applicant hereby requests an interference with U.S. Application No. 10/166,306 (U.S. Publication No. 2002/0156481) to Boyd et al. (hereinafter, "Boyd '481") pursuant to 37 C.F.R. § 1.604(a). A proposed count is attached hereto.

Claims 1 and 4-8 of Boyd '481 correspond to claims 1-6, respectively, of the proposed count. Claims 1-6 of the present application also correspond to claims 1-6, respectively, of the proposed count.

Applicant requests an interference with Boyd '481 because the aforementioned claims of Boyd '481 cover subject matter which was invented by Applicant prior to the earliest priority date of Boyd '481.

Applicant submits that the subject matter of claims 1-6 of the proposed count is fully supported by Applicant's original disclosure, for example, on page 32, line 29 to page 35, line 4 of the specification and Figs. 2, 3D, 3E, 3F, and 4. The Examiner is requested to declare an interference between the present application and U.S. Application No. 10/166,306.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 50-1068.

Respectfully submitted,

MARTIN & FERRARO, LLP

Date: October 24, 2003

By: 

Amedeo F. Ferraro

Registration No. 37,129

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PROPOSED COUNT UNDER 37 C.F.R. § 1.604(a)(1)

1. A distractor, comprising: a distraction head having a longitudinal axis and a first pair of opposed surfaces extending substantially along said longitudinal axis and defining a first working distraction height approximating a normal disc space height and a second pair of opposed surfaces extending substantially along said longitudinal axis and defining a second working distraction height approximating a second normal disc space height, said distraction head rotatable between said first distraction height and said second distraction height by rotating the distraction head about said longitudinal axis.
2. The distractor of claim 1, wherein said first pair of opposing surfaces are planar surfaces extending in a parallel alignment along said longitudinal axis.
3. The distractor of claim 2, wherein said distractor head includes:
 - a distractor tip having a rounded leading edge to permit insertion of said distractor head to directly achieve said second working distraction height; and
 - a pair of inclined surfaces extending from said leading edge to said first pair of opposing surfaces.
4. The distractor of claim 1, wherein said distractor head includes rounded surfaces adapted to engage and urge bone apart to said second distraction height during rotation.
5. The distractor of claim 1, further comprising a shaft joined with said distractor head.
6. The distractor of claim 5, wherein said shaft is integrally joined to said distractor head.